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8 **UNITED STATES DISTRICT COURT**  
9 **SOUTHERN DISTRICT OF CALIFORNIA**  
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11 RAYMOND ROBINSON,

12 Plaintiff,

13 vs.

14 DAVID RUBIN AND BRIAN CORNELL,

15 Defendants.

CASE NO. 08cv0244 DMS (BLM)

**ORDER GRANTING DEFENDANT  
BRIAN CORNELL'S MOTION TO  
DISMISS PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

**[Docket No. 20]**

16 This matter comes before the Court on Defendant Brian Cornell's motion to dismiss Plaintiff's  
17 First Amended Complaint. Plaintiff has filed an opposition to the motion, and Defendant Cornell has  
18 filed a reply. On June 3, 2008, the Court found the motion suitable for decision without oral argument  
19 pursuant to Civil Local Rule 7.1(d)(1). For the reasons discussed below, the Court grants the motion  
20 to dismiss.

21 **I.**

22 **BACKGROUND**

23 This case arises out of a traffic citation that Defendant Cornell issued to Plaintiff on November  
24 15, 2006. On February 9, 2007, Defendant David Rubin, a San Diego Superior Court judge, held a  
25 hearing on the traffic citation. Plaintiff and Defendant Cornell appeared and testified at the hearing,  
26 at the conclusion of which Judge Rubin found Plaintiff guilty.

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1 Plaintiff filed the present case against Judge Rubin and Defendant Cornell on February 7, 2008.  
 2 Defendants each filed motions to dismiss the complaint, which were denied as moot upon the filing  
 3 of Plaintiff's First Amended Complaint.

4 In the First Amended Complaint, Plaintiff alleges the Defendants conspired to deprive him of  
 5 his due process rights as protected under and guaranteed by Section 1 of the Fourteenth Amendment.  
 6 Plaintiff also alleges the Defendants violated California Civil Code sections 1708, 1709, 1710 and  
 7 California Penal Code sections 182(a)(1) and 182(a)(5).<sup>1</sup> Judge Rubin filed a motion to dismiss the  
 8 First Amended Complaint on May 21, 2008, and a hearing on the matter is scheduled for July 11,  
 9 2008.

## 10 II.

### 11 DISCUSSION

12 Defendant Cornell moves to dismiss the First Amended Complaint for two reasons. First, he  
 13 argues Plaintiff has failed to state a claim upon which relief can be granted. Second, he asserts he is  
 14 immune from liability.

#### 15 A. Failure to State a Claim

16 Dismissal pursuant to Rule 12(b)(6) is proper only where there is no cognizable legal theory  
 17 or an absence of sufficient facts alleged to support a cognizable legal theory. *Navarro v. Block*, 250  
 18 F.3d 729, 732 (9th Cir. 2001) (citing *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 699 (9th Cir.  
 19 1988)). In deciding a 12(b)(6) motion, all material factual allegations of the complaint are accepted  
 20 as true, as well as all reasonable inferences to be drawn from them. *Cahill v. Liberty Mut. Ins. Co.*,  
 21 80 F.3d 336, 338 (9th Cir. 1996). However, the court need not accept all conclusory allegations as  
 22 true; rather, it must "examine whether conclusory allegations follow from the description of facts as  
 23 alleged by the plaintiff." *Holden v. Hagopian*, 978 F.2d 1115, 1121 (9th Cir. 1992) (citation omitted).  
 24 See also *Benson v. Arizona State Bd. of Dental Examiners*, 673 F.2d 272, 275-76 (9th Cir. 1982) (court  
 25 need not accept conclusory legal assertions); *Sherman v. Yakahi*, 549 F.2d 1287, 1290 (9th Cir. 1977)

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 27 <sup>1</sup> Because the Court has dismissed all of Plaintiff's federal claims, the Court declines to exercise  
 28 supplemental jurisdiction under 28 U.S.C. § 1367(c) as to the state law claims under California Civil Code  
 sections 1708, 1709, 1710. The Court also declines to address Plaintiff's criminal claims because a private  
 citizen has no authority to initiate a federal criminal prosecution; that power is vested exclusively in the  
 executive branch. See *United States v. Nixon*, 418 U.S. 683, 693 (1974).

1 (“Conclusory allegations, unsupported by facts, [will be] rejected as insufficient to state a claim under  
 2 the Civil Rights Act.”); *accord Swanson v. Bixler*, 750 F.2d 810, 813 (10th Cir. 1984) (“All  
 3 well-pleaded facts, as distinguished from conclusory allegations, must be taken as true.”). A claim  
 4 “should not be dismissed unless it appears beyond doubt that plaintiff can prove no set of facts in  
 5 support of his claim which would entitle him to relief.” *Perfect 10, Inc. v. Visa Intern. Service Ass’n*,  
 6 494 F.3d 788, 794 (9<sup>th</sup> Cir. 2007) (quoting *Rodriguez v. Panayiotou*, 314 F.3d 979, 983 (9<sup>th</sup> Cir.  
 7 2002)).

8 To allege a claim of conspiracy under Section 1983, Plaintiff must allege facts with sufficient  
 9 particularity to show an agreement or a meeting of the minds to violate the Plaintiff’s constitutional  
 10 rights. *Margolis v. Ryan*, 140 F.3d 850, 853 (9th Cir. 1998); *Woodrum v. Woodward County*, 866 F.2d  
 11 1121, 1126 (9th Cir. 1989). “Vague and conclusory allegations of official participation in civil rights  
 12 violations are not sufficient to withstand a motion to dismiss.” *Ivey v. Board of Regents*, 673 F.2d  
 13 266, 268 (9th Cir. 1982); *Aldabe v. Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (conclusory  
 14 allegations of conspiracy insufficient to support a claim under Section 1983 or 1985). Here, Plaintiff  
 15 has failed to allege any facts which show an agreement or meeting of the minds to violate any of  
 16 Plaintiff’s constitutional rights. *See Woodrum*, 866 F.2d at 1126.

17 Even if Plaintiff had alleged facts to support this element of his claim, this Court agrees with  
 18 Defendant that Plaintiff has no legal basis for a Section 1983 claim. The California Supreme Court  
 19 has specifically held that a traffic infraction hearing conducted without a prosecutor where a judge  
 20 calls and questions the officer who issued the citation does not violate due process. *People v.*  
 21 *Carlucci*, 23 Cal 3d. 249, 256 (1979). When Defendant Cornell testified regarding the circumstances  
 22 of the citation, he was a witness, not a prosecutor. As a trier of fact, Judge Rubin sought to understand  
 23 the facts of the incident through the testimony of Plaintiff and Defendant Cornell. Accordingly, the  
 24 Court grants Defendant Officer Cornell’s motion to dismiss Plaintiff’s conspiracy claims pursuant to  
 25 Federal Rule of Civil Procedure 12(b)(6).

## 26 **B. Immunity**

27 Defendant Cornell is immune from civil liability for his testimony as a witness in the traffic  
 28 infraction proceedings. Like other witnesses, a police officer who testifies in a criminal proceeding

1 is immune from civil liability, even if he committed perjury. *Briscoe v. LaHue*, 460 U.S. 325, 345  
2 (1983). In light of the immunity afforded to Defendant Cornell as a witness, this Court declines to  
3 address additional immunities raised by Defendant. Accordingly, this Court grants Defendant's  
4 motion to dismiss because Defendant Officer Cornell is absolutely immune from civil liability for his  
5 testimony.

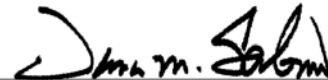
6 **III.**

7 **CONCLUSION AND ORDER**

8 In light of the above, the Court GRANTS Defendant's motion to dismiss Plaintiff's First  
9 Amended Complaint for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6).  
10 Plaintiff's First Amended Complaint is hereby dismissed as against Defendant Cornell without leave  
11 to amend.

12 **IT IS SO ORDERED.**

13 DATED: June 9, 2008

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15 HON. DANA M. SABRAW  
16 United States District Judge  
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